

Introduced by Senator Emmerson

February 20, 2013

An act to amend Sections 34171, 34178 and 34191.4 of, and to add Section 34004.2 to, the Health and Safety Code, relating to the County of San Bernardino Cedar Glen Disaster Recovery Project Area.

LEGISLATIVE COUNSEL'S DIGEST

SB 409, as introduced, Emmerson. The County of San Bernardino Cedar Glen Disaster Recovery Project Area: enforceable obligations.

The Community Redevelopment Law authorizes the establishment of redevelopment agencies in communities to address the effects of blight, as defined. Existing law dissolved redevelopment agencies and community development agencies, as of February 1, 2012, and provides for the designation of successor agencies. Existing law imposes various requirements on successor agencies and subjects successor agency actions to the review of oversight boards. Existing law requires each oversight board to direct the successor agency to, among other things, cease performance in connection with and terminate all existing agreements that do not qualify as enforceable obligations, as defined.

This bill would provide that a loan provided by the County of San Bernardino to the County of San Bernardino Redevelopment Agency that was entered into prior to December 31, 2005, for the purposes of funding the installation and construction of roadways, public improvements, and public utilities in the Cedar Glen Disaster Recovery Project Area, and for the provision of residential water system connection subsidies to low- and moderate-income residents of that project area is an enforceable obligation and may be repaid, as specified. The bill would authorize the successor agency to the County of San Bernardino Redevelopment Agency to retain and use those loan proceeds

pursuant to the loan agreement and would require the return of any funds previously deposited into the Low and Moderate Income Housing Fund of the County of San Bernardino Redevelopment Agency to the successor agency to the County of San Bernardino. The bill would also prohibit the Department of Finance, the State Board of Equalization, the State Controller, and the San Bernardino County Auditor-Controller from imposing any statutory remedies upon the County of San Bernardino or the successor agency to the County of San Bernardino Redevelopment Agency, and would require the reversal, within 30 days of the effective date of this bill, of any statutory remedy previously imposed. The bill would also make conforming changes.

This bill would make legislative findings and declarations as to the necessity of a special statute for County of San Bernardino Redevelopment Agency and by the Successor Agency to the County of San Bernardino Redevelopment Agency.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature hereby finds and determines all
- 2 of the following:
- 3 (a) Public works projects planned for the Cedar Glen Disaster
- 4 Recovery Project Area were delayed due to a private water
- 5 company's financial problems after the Old Fire. As a result, those
- 6 two public works projects are not completed, and the proceeds of
- 7 a loan provided by the County of San Bernardino to fund such
- 8 public works and water system connection subsidies remain
- 9 available for those purposes.
- 10 (b) In 2003, the Old Fire destroyed 324 homes in the Cedar
- 11 Glen community. Lack of an adequate water system and roadway
- 12 access were determined to be primary causes of the devastation.
- 13 (c) The County of San Bernardino established the Cedar Glen
- 14 Disaster Recovery Project Area and adopted a plan to assist
- 15 property owners, residents and business owners to recover from
- 16 the fire damage and eliminate blighted conditions that preexisted
- 17 the fire and contributed to the scale of its damage. To assist in the
- 18 recovery of the project area, the county provided a \$10,000,000
- 19 loan using county general fund revenue to finance water system

1 and roadway improvements and to fund water system connection
2 fee subsidies for low- and moderate-income homeowners.

3 (d) The Department of Housing and Community Development
4 awarded a Disaster Recovery Initiative grant to assist in the
5 recovery. The terms of the grant required it to be spent by April
6 30, 2009. As a result of this requirement and delays that resulted
7 from the water company's placement status in receivership, the
8 expenditure of the county loan proceeds was delayed, and
9 approximately \$9,000,000 of the loan proceeds remain unspent.

10 (e) The critical need for water system, roadway, and other public
11 improvements remains unmet.

12 (f) In connection with the wind-down of the affairs of the
13 successor agency to the County of San Bernardino Redevelopment
14 Agency, the Department of Finance has determined that the
15 remaining proceeds of the county loan may not be spent for the
16 purposes for which the loan was originated, and may not be
17 returned to the County of San Bernardino to enable the county to
18 spend the proceeds for these purposes, but instead must be remitted
19 to the county auditor-controller and distributed to affected taxing
20 entities.

21 (g) It is in the public interest and the interest of the health, safety
22 and welfare of the residents of the County of San Bernardino and
23 the Cedar Glen Disaster Recovery Project Area to permit the
24 successor agency to the County of San Bernardino Redevelopment
25 Agency to spend the remaining proceeds of the county general
26 fund loan for the purposes for which the loan was originated, and
27 to permit the loan to be repaid to the county.

28 SEC. 2. Section 34004.2 is added to the Health and Safety
29 Code, to read:

30 34004.2. (a) Notwithstanding subdivision (b) of Section
31 34191.4, or any other law, a loan provided by the County of San
32 Bernardino to the County of San Bernardino Redevelopment
33 Agency pursuant to a written agreement entered into prior to
34 December 31, 2005, for the purpose of funding the installation and
35 construction of roadways, public improvements, and public utilities
36 in the Cedar Glen Disaster Recovery Project Area, and for the
37 provision of residential water system connection subsidies to low-
38 and moderate-income residents of the Cedar Glen Disaster
39 Recovery Project Area, shall be deemed to be an enforceable
40 obligation within the meaning of paragraph (1) of subdivision (d)

1 of Section 34171, and may be repaid pursuant to the terms set forth
2 in the written agreement notwithstanding any contrary provision
3 of law.

4 (b) Notwithstanding subdivision (d) of Section 34177 and
5 Section 34179.6, or any other law, the proceeds of loans described
6 in subdivision (a) shall be used for the purposes for which the loans
7 were made, and the successor agency to the County of San
8 Bernardino Redevelopment Agency may retain those loan proceeds
9 and enter into agreements for the expenditure of the loan proceeds
10 for those purposes, including, but not limited to, agreements with
11 the County of San Bernardino. These actions shall not be subject
12 to review by the successor agency's oversight board or by the
13 Department of Finance.

14 (c) Notwithstanding subdivision (d) of Section 34177 and
15 Section 34179.6, or any other law, the County of San Bernardino,
16 acting in its capacity as the successor to the housing functions of
17 the County of San Bernardino Redevelopment Agency, may receive
18 and use that portion of the proceeds of loans described in
19 subdivision (a) that had been deposited into the Low and Moderate
20 Income Housing Fund of the County of San Bernardino
21 Redevelopment Agency to provide residential water system
22 connection subsidies to low- and moderate-income residents of
23 the Cedar Glen Disaster Recovery Project Area, and the successor
24 agency to the County of San Bernardino Redevelopment Agency
25 shall transfer those funds to the County of San Bernardino for such
26 purpose. These actions shall not be subject to review by the
27 successor agency's oversight board or by the Department of
28 Finance.

29 (d) Notwithstanding any other law, the Department of Finance,
30 the State Board of Equalization, the Controller, or the San
31 Bernardino County Auditor-Controller shall not have the authority
32 to impose any of the remedies described in subdivision (h) of
33 Section 34179.6 in connection with any failure of the County of
34 San Bernardino or the successor agency to the County of San
35 Bernardino Redevelopment Agency to remit any portion of the
36 proceeds of a loan described in subdivision (a) to the County of
37 San Bernardino Auditor-Controller. If the Department of Finance,
38 the State Board of Equalization, the Controller, or the San
39 Bernardino County Auditor-Controller have imposed any of the
40 remedies described in subdivision (h) of Section 34179.6 in

1 connection with any failure of the County of San Bernardino or
2 the successor agency to the County of San Bernardino
3 Redevelopment Agency to remit any portion of the proceeds of a
4 loan described in subdivision (a) to the County of San Bernardino
5 Auditor-Controller, then any remedy imposed, including, but not
6 limited to, without any reduction in, or offset of, sales and use tax
7 or property tax allocations, any fine or penalty, and any reduction
8 in the allocation of property tax to the successor agency to the
9 County of San Bernardino Redevelopment Agency, shall be
10 rescinded, and all reductions in or offsets to, any revenue, tax, or
11 fund shall be returned to the County of San Bernardino or to the
12 successor agency to the County of San Bernardino Redevelopment
13 Agency, as applicable, within 30 days following the effective date
14 of the act adding this section.

15 (e) Notwithstanding any other law, the Department of Finance
16 shall not withhold the issuance of a finding of completion to the
17 successor agency to the County of San Bernardino Redevelopment
18 Agency pursuant to Section 34179.7 on the basis of any failure of
19 the County of San Bernardino or the successor agency to the
20 County of San Bernardino Redevelopment Agency to remit any
21 portion of the proceeds of a loan described in subdivision (a) to
22 the County of San Bernardino Auditor-Controller.

23 SEC. 3. Section 34171 of the Health and Safety Code is
24 amended to read:

25 34171. The following terms shall have the following meanings:

26 (a) “Administrative budget” means the budget for administrative
27 costs of the successor agencies as provided in Section 34177.

28 (b) “Administrative cost allowance” means an amount that,
29 subject to the approval of the oversight board, is payable from
30 property tax revenues of up to 5 percent of the property tax
31 allocated to the successor agency on the Recognized Obligation
32 Payment Schedule covering the period January 1, 2012, through
33 June 30, 2012, and up to 3 percent of the property tax allocated to
34 the Redevelopment Obligation Retirement Fund money that is
35 allocated to the successor agency for each fiscal year thereafter;
36 provided, however, that the amount shall not be less than two
37 hundred fifty thousand dollars (\$250,000), unless the oversight
38 board reduces this amount, for any fiscal year or such lesser amount
39 as agreed to by the successor agency. However, the allowance
40 amount shall exclude, and shall not apply to, any administrative

1 costs that can be paid from bond proceeds or from sources other
2 than property tax. Administrative cost allowances shall exclude
3 any litigation expenses related to assets or obligations, settlements
4 and judgments, and the costs of maintaining assets prior to
5 disposition. Employee costs associated with work on specific
6 project implementation activities, including, but not limited to,
7 construction inspection, project management, or actual
8 construction, shall be considered project-specific costs and shall
9 not constitute administrative costs.

10 (c) “Designated local authority” shall mean a public entity
11 formed pursuant to subdivision (d) of Section 34173.

12 (d) (1) “Enforceable obligation” means any of the following:

13 (A) Bonds, as defined by Section 33602 and bonds issued
14 pursuant to Chapter 10.5 (commencing with Section 5850) of
15 Division 6 of Title 1 of the Government Code, including the
16 required debt service, reserve set-asides, and any other payments
17 required under the indenture or similar documents governing the
18 issuance of the outstanding bonds of the former redevelopment
19 agency. A reserve may be held when required by the bond
20 indenture or when the next property tax allocation will be
21 insufficient to pay all obligations due under the provisions of the
22 bond for the next payment due in the following half of the calendar
23 year.

24 (B) Loans of moneys borrowed by the redevelopment agency
25 for a lawful purpose, to the extent they are legally required to be
26 repaid pursuant to a required repayment schedule or other
27 mandatory loan terms.

28 (C) Payments required by the federal government, preexisting
29 obligations to the state or obligations imposed by state law, other
30 than passthrough payments that are made by the county
31 auditor-controller pursuant to Section 34183, or legally enforceable
32 payments required in connection with the agencies’ employees,
33 including, but not limited to, pension payments, pension obligation
34 debt service, unemployment payments, or other obligations
35 conferred through a collective bargaining agreement. Costs incurred
36 to fulfill collective bargaining agreements for layoffs or
37 terminations of city employees who performed work directly on
38 behalf of the former redevelopment agency shall be considered
39 enforceable obligations payable from property tax funds. The
40 obligations to employees specified in this subparagraph shall

1 remain enforceable obligations payable from property tax funds
2 for any employee to whom those obligations apply if that employee
3 is transferred to the entity assuming the housing functions of the
4 former redevelopment agency pursuant to Section 34176. The
5 successor agency or designated local authority shall enter into an
6 agreement with the housing entity to reimburse it for any costs of
7 the employee obligations.

8 (D) Judgments or settlements entered by a competent court of
9 law or binding arbitration decisions against the former
10 redevelopment agency, other than passthrough payments that are
11 made by the county auditor-controller pursuant to Section 34183.
12 Along with the successor agency, the oversight board shall have
13 the authority and standing to appeal any judgment or to set aside
14 any settlement or arbitration decision.

15 (E) Any legally binding and enforceable agreement or contract
16 that is not otherwise void as violating the debt limit or public
17 policy. However, nothing in this act shall prohibit either the
18 successor agency, with the approval or at the direction of the
19 oversight board, or the oversight board itself from terminating any
20 existing agreements or contracts and providing any necessary and
21 required compensation or remediation for such termination. Titles
22 of or headings used on or in a document shall not be relevant in
23 determining the existence of an enforceable obligation.

24 (F) Contracts or agreements necessary for the administration or
25 operation of the successor agency, in accordance with this part,
26 including, but not limited to, agreements concerning litigation
27 expenses related to assets or obligations, settlements and
28 judgements, and the costs of maintaining assets prior to disposition,
29 and agreements to purchase or rent office space, equipment and
30 supplies, and pay-related expenses pursuant to Section 33127 and
31 for carrying insurance pursuant to Section 33134.

32 (G) Amounts borrowed from, or payments owing to, the Low
33 and Moderate Income Housing Fund of a redevelopment agency,
34 which had been deferred as of the effective date of the act adding
35 this part; provided, however, that the repayment schedule is
36 approved by the oversight board. Repayments shall be transferred
37 to the Low and Moderate Income Housing Asset Fund established
38 pursuant to subdivision (d) of Section 34176 as a housing asset
39 and shall be used in a manner consistent with the affordable

1 housing requirements of the Community Redevelopment Law (Part
2 1 (commencing with Section 33000)).

3 *(H) Loan agreements described in subdivision (a) of Section*
4 *34004.2.*

5 (2) For purposes of this part, “enforceable obligation” does not
6 include any agreements, contracts, or arrangements between the
7 city, county, or city and county that created the redevelopment
8 agency and the former redevelopment agency. However, written
9 agreements entered into (A) at the time of issuance, but in no event
10 later than December 31, 2010, of indebtedness obligations, and
11 (B) solely for the purpose of securing or repaying those
12 indebtedness obligations may be deemed enforceable obligations
13 for purposes of this part. Notwithstanding this paragraph, loan
14 agreements entered into between the redevelopment agency and
15 the city, county, or city and county that created it, within two years
16 of the date of creation of the redevelopment agency, may be
17 deemed to be enforceable obligations, *and loan agreements*
18 *described in subdivision (a) of Section 34004.2 shall be deemed*
19 *to be enforceable obligations.*

20 (3) Contracts or agreements between the former redevelopment
21 agency and other public agencies, to perform services or provide
22 funding for governmental or private services or capital projects
23 outside of redevelopment project areas that do not provide benefit
24 to the redevelopment project and thus were not properly authorized
25 under Part 1 (commencing with Section 33000) shall be deemed
26 void on the effective date of this part; provided, however, that such
27 contracts or agreements for the provision of housing properly
28 authorized under Part 1 (commencing with Section 33000) shall
29 not be deemed void.

30 (e) “Indebtedness obligations” means bonds, notes, certificates
31 of participation, or other evidence of indebtedness, issued or
32 delivered by the redevelopment agency, or by a joint exercise of
33 powers authority created by the redevelopment agency, to
34 third-party investors or bondholders to finance or refinance
35 redevelopment projects undertaken by the redevelopment agency
36 in compliance with the Community Redevelopment Law (Part 1
37 (commencing with Section 33000)).

38 (f) “Oversight board” shall mean each entity established pursuant
39 to Section 34179.

1 (g) “Recognized obligation” means an obligation listed in the
2 Recognized Obligation Payment Schedule.

3 (h) “Recognized Obligation Payment Schedule” means the
4 document setting forth the minimum payment amounts and due
5 dates of payments required by enforceable obligations for each
6 six-month fiscal period as provided in subdivision (m) of Section
7 34177.

8 (i) “School entity” means any entity defined as such in
9 subdivision (f) of Section 95 of the Revenue and Taxation Code.

10 (j) “Successor agency” means the successor entity to the former
11 redevelopment agency as described in Section 34173.

12 (k) “Taxing entities” means cities, counties, a city and county,
13 special districts, and school entities, as defined in subdivision (f)
14 of Section 95 of the Revenue and Taxation Code, that receive
15 passthrough payments and distributions of property taxes pursuant
16 to the provisions of this part.

17 (l) “Property taxes” include all property tax revenues, including
18 those from unitary and supplemental and roll corrections applicable
19 to tax increment.

20 (m) “Department” means the Department of Finance unless the
21 context clearly refers to another state agency.

22 (n) “Sponsoring entity” means the city, county, or city and
23 county, or other entity that authorized the creation of each
24 redevelopment agency.

25 (o) “Final judicial determination” means a final judicial
26 determination made by any state court that is not appealed, or by
27 a court of appellate jurisdiction that is not further appealed, in an
28 action by any party.

29 SEC. 4. Section 34178 of the Health and Safety Code is
30 amended to read:

31 34178. (a) Commencing on the operative date of this part,
32 agreements, contracts, or arrangements between the city or county,
33 or city and county that created the redevelopment agency and the
34 redevelopment agency are invalid and shall not be binding on the
35 successor agency; provided, however, that a successor entity
36 wishing to enter or reenter into agreements with the city, county,
37 or city and county that formed the redevelopment agency that it
38 is succeeding may do so upon obtaining the approval of its
39 oversight board. A successor agency or an oversight board shall
40 not exercise the powers granted by this subdivision to restore

1 funding for an enforceable obligation that was deleted or reduced
2 by the Department of Finance pursuant to subdivision (h) of Section
3 34179 unless it reflects the decisions made during the meet and
4 confer process with the Department of Finance or pursuant to a
5 court order.

6 (b) Notwithstanding subdivision (a), any of the following
7 agreements are not invalid and may bind the successor agency:

8 (1) A duly authorized written agreement entered into at the time
9 of issuance, but in no event later than December 31, 2010, of
10 indebtedness obligations, and solely for the purpose of securing
11 or repaying those indebtedness obligations.

12 (2) A written agreement between a redevelopment agency and
13 the city, county, or city and county that created it that provided
14 loans or other startup funds for the redevelopment agency that
15 were entered into within two years of the formation of the
16 redevelopment agency.

17 (3) A joint exercise of powers agreement in which the
18 redevelopment agency is a member of the joint powers authority.
19 However, upon assignment to the successor agency by operation
20 of the act adding this part, the successor agency's rights, duties,
21 and performance obligations under that joint exercise of powers
22 agreement shall be limited by the constraints imposed on successor
23 agencies by the act adding this part.

24 (4) *A written loan agreement between a redevelopment agency*
25 *and the city, county, or city and county that created it as described*
26 *in subdivision (a) of Section 34004.2.*

27 SEC. 5. Section 34191.4 of the Health and Safety Code is
28 amended to read:

29 34191.4. The following provisions shall apply to any successor
30 agency that has been issued a finding of completion by the
31 Department of Finance:

32 (a) All real property and interests in real property identified in
33 subparagraph (C) of paragraph (5) of subdivision (c) of Section
34 34179.5 shall be transferred to the Community Redevelopment
35 Property Trust Fund of the successor agency upon approval by the
36 Department of Finance of the long-range property management
37 plan submitted by the successor agency pursuant to subdivision

38 (b) of Section 34191.7 unless that property is subject to the
39 requirements of any existing enforceable obligation.

1 (b) (1) Notwithstanding subdivision (d) of Section 34171, upon
2 application by the successor agency and approval by the oversight
3 board, loan agreements entered into between the redevelopment
4 agency and the city, county, or city and county that created by the
5 redevelopment agency shall be deemed to be enforceable
6 obligations provided that the oversight board makes a finding that
7 the loan was for legitimate redevelopment purposes.

8 (2) If the oversight board finds that the loan is an enforceable
9 obligation, the accumulated interest on the remaining principal
10 amount of the loan shall be recalculated from origination at the
11 interest rate earned by funds deposited into the Local Agency
12 Investment Fund. The loan shall be repaid to the city, county, or
13 city and county in accordance with a defined schedule over a
14 reasonable term of years at an interest rate not to exceed the interest
15 rate earned by funds deposited into the Local Agency Investment
16 Fund. The annual loan repayments provided for in the recognized
17 obligations payment schedules shall be subject to all of the
18 following limitations:

19 (A) Loan repayments shall not be made prior to the 2013–14
20 fiscal year. Beginning in the 2013–14 fiscal year, the maximum
21 repayment amount authorized each fiscal year for repayments
22 made pursuant to this subdivision and paragraph (7) of subdivision
23 (e) of Section 34176 combined shall be equal to one-half of the
24 increase between the amount distributed to the taxing entities
25 pursuant to paragraph (4) of subdivision (a) of Section 34183 in
26 that fiscal year and the amount distributed to taxing entities
27 pursuant to that paragraph in the 2012–13 base year. Loan or
28 deferral repayments made pursuant to this subdivision shall be
29 second in priority to amounts to be repaid pursuant to paragraph
30 (7) of subdivision (e) of Section 34176.

31 (B) Repayments received by the city, county or city and county
32 that formed the redevelopment agency shall first be used to retire
33 any outstanding amounts borrowed and owed to the Low and
34 Moderate Income Housing Fund of the former redevelopment
35 agency for purposes of the Supplemental Educational Revenue
36 Augmentation Fund and shall be distributed to the Low and
37 Moderate Income Housing Asset Fund established by subdivision
38 (d) of Section 34176.

39 (C) Twenty percent of any loan repayment shall be deducted
40 from the loan repayment amount and shall be transferred to the

1 Low and Moderate Income Housing Asset Fund, after all
2 outstanding loans from the Low and Moderate Income Housing
3 Fund for purposes of the Supplemental Educational Revenue
4 Augmentation Fund have been paid.

5 *(3) Notwithstanding subdivision (b) or any other law, loan*
6 *agreements described in subdivision (a) of Section 34004.2 shall*
7 *be repaid pursuant to the terms set forth in the loan agreement.*

8 (c) (1) Bond proceeds derived from bonds issued on or before
9 December 31, 2010, shall be used for the purposes for which the
10 bonds were sold.

11 (2) (A) Notwithstanding Section 34177.3 or any other
12 conflicting provision of law, bond proceeds in excess of the
13 amounts needed to satisfy approved enforceable obligations shall
14 thereafter be expended in a manner consistent with the original
15 bond covenants. Enforceable obligations may be satisfied by the
16 creation of reserves for projects that are the subject of the
17 enforceable obligation and that are consistent with the contractual
18 obligations for those projects, or by expending funds to complete
19 the projects. An expenditure made pursuant to this paragraph shall
20 constitute the creation of excess bond proceeds obligations to be
21 paid from the excess proceeds. Excess bond proceeds obligations
22 shall be listed separately on the Recognized Obligation Payment
23 Schedule submitted by the successor agency.

24 (B) If remaining bond proceeds cannot be spent in a manner
25 consistent with the bond covenants pursuant to subparagraph (A),
26 the proceeds shall be used to defease the bonds or to purchase
27 those same outstanding bonds on the open market for cancellation.

28 SEC. 6. The Legislature finds and declares that a special law
29 is necessary and that a general law cannot be made applicable
30 within the meaning of Section 16 of Article IV of the California
31 Constitution because of the unique circumstances faced by the
32 former County of San Bernardino Redevelopment Agency and by
33 the Successor Agency to the County of San Bernardino
34 Redevelopment Agency.